

FUNDING FOR RETIREE HEALTH CARE BENEFITS

**Retiree Health Care Reforms Committee
Michigan House of Representatives**

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MAPERS



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What is MAPERS?

Michigan Association of Public Employee Retirement Systems

"Tomorrow's Future Through Today's Education"

- 129 public employee retirement and health care plans in Michigan representing over 250,000 retirees and 500,000 employees with over \$60 billion in assets.
- MAPERS Achievement Program.



Presentation Overview

- Funding Retiree Healthcare
 - OPEB liabilities & PA 149 of 1999
 - Investment of Plan Assets
 - Mandated Pre-funding
- Defining & Protecting Healthcare Benefits
 - The Studier Supreme Court decision
 - The benefit promise should remain a local issue



GASB –

Other Post Employment Benefits (OPEB)

- GASB 43 & 45 provide that “an employer has contributed to an OPEB plan if the employer has irrevocably transferred assets to a trust that is dedicated to the payment of benefits and is protected from potential claims by the employer's creditors.”
- “. . . it is essential to distinguish whether assets are “employer assets or plan assets”
- “. . . it would be misleading to report as plan assets resources that are subject to claims by the employer's creditors”



Funding for Retiree Healthcare Liabilities

- The Public Employee Health Care Fund Investment Act, Public Act 149 of 1999, was enacted to allow local units of government to establish funds for the purpose of accruing and investing assets for funding of retiree health care benefits.
- Also recognizes the use of trusts as funding vehicles.
- Allows fund assets to be invested in accordance with Public Act 314 of 1965, as amended.



Adoption of Public Act 149 requires:

- The designation of an investment fiduciary;
- A restriction of withdrawals from the fund solely for the payment of health care benefits and the payment of expenses of the fund;
- The designation of the participants and beneficiaries for purpose of payment of health care benefits, and;
- A determination of whether the fund will be established on an actuarial basis.



Public Act 149

Committee should review and make recommendation to amend PA 149 to address the following:

- ✓ Protection of the assets from the claims of creditors (may also need to address the applicable bankruptcy laws);
- ✓ Provide applicability to all retiree health care trust funds;
- ✓ Require clarification of the retiree health care promise.



Other Retiree Healthcare Funding Considerations

- MAPERS Act 314 amendment initiative
 - Proposed amendments to enable plans to invest in investment strategies with greater protections from market volatility and to further diversify the retirement system's portfolio.
 - MERS & Treasury/Bureau of Investments involved in preliminary discussions.



Other Retiree Healthcare Funding Considerations

Mandated Pre-funding

- Article 9, Section 24 of the Michigan Constitution of 1963 provides that the "[f]inancial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities."
- GASB requires accounting for OPEB benefits but does not mandate pre-funding.



Defining & Protecting Retiree Health Care Benefits

- What protections exist as to retiree health care promises?
 - *Studier v MPSERS*, 472 Mich 642 (2005)
 - The Constitutional protections of Article 9, Section 24 applicable to retirement benefits do not apply.
 - Const 1963, Art. 1, Sec.10, provides protection from "substantial" impairment provided the promise is "contractual."



Defining & Protecting the Health Care Promise

- Whether to provide retiree health care benefits and at what level should remain a local issue.
- It should be required that a retiree health care promise, if any, be sufficiently defined in writing.
- If a promise is made, it should be recognized as a contractual benefit and afforded appropriate legal protection.
- Lack of legislative guidance on this issue will result in significant legal costs to public sector plans as well as potential conflicting judicial determinations.



Other Committee Considerations

- Expand the protections of the *Public Employee Retirement Benefit Protection Act*, Public Act 100 of 2002 (MCL 38.1681 et seq.), to cover retiree health care accounts.
- Seek clarification and guidance from the AG and/or IRS as to the authority and use of Public Act 28 of 1966 (MCL 38.571 et seq.) in light of the Internal Revenue Code provisions governing qualified governmental plans.

